Office Supreme Court U.S.
FILED
Mar. 7 1901
JAMES H. McKENNEY,
Clerk.

No. 190.

Brief of Smith for D. C.

Filed Mar. 7, 1901.

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N.Y., Plaintiff in Error,

vs.

LAWRENCE S. WELLING AND MARION BONNOITT, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

BRIEF OF ARGUMENT ON BEHALF OF DEFENDANTS IN ERROR.

HENRY A. M. SMITH,
ATTORNEY FOR DEFENDANTS IN ERROR.

INDEX.

Statement of Facts..... page 1
Argument..... " 8
Points of Law..... " 8-10
No Federal Question decided by State Court.... " 11
Ground stated broad enough to support judgment " 12
Alleged Federal Questions..... " 14
Denial of Full Faith and Credit ..... " 14
Impairment of Contract ..... " 20
Denial of due process of Law..... " 22

22021

Supreme Court of the United States

OCTOBER TERM, 1900.

No. 190.

EASTERN BUILDING AND LOAN ASSOCIATION OF SYRACUSE, N.Y., Plaintiff in Error,

vs.

LAWRENCE S. WELLING AND MARION BONNOITT, Defendants in Error.

IN ERROR TO THE SUPREME COURT OF SOUTH CAROLINA.

BRIEF OF ARGUMENT ON BEHALF OF DEFENDANTS IN ERROR.

STATEMENT OF FACTS.

The Plaintiff in Error herein is a Building and Loan Association, which for the purpose of extending its business, issued and circulated certain advertisement circulars for the information and inducement of intending members or borrowers.

This inducing circular in the present case will be found on pages 39 to page 46, both inclusive, of the Printed Transcript of Record, and is styled "Exhibit D," or the "*Definite Contract Plan.*"

This is the first circular or paper to be considered in connection with the present case.

At the bottom of p.41 of the Printed Transcript will be found the representation to shareholders, in which it is stated as follows :

"All shares on which payments are made are regularly matured at "the expiration of 78 months. (Six and one-half years from the date "of the certificate)."

So in what is called the "Short Catechism," stating the objects and results of this institution, beginning on p. 40, on p. 41, (5th line from top of page) is found this question :

"Q. When will the shares reach their par value ?
"A. Shares mature in exactly six and one-half years."

And on the back of the cover of the same circular to draw more attention, it is stated (as is set out, page 46, *Printed Transcript*,) "Stock matures in 78 months."

Again, in the same circular (page 43, of the *Printed Transcript*)in the illustration given, there is shown the costs and profits to the investor of 10 shares in six and one-half years, the time of maturity.

The entire statement therefore repeatedly made in this circular, furnished as information to any one intending to become a member, is that the stock was to mature in six and one-half years.

Induced by this circular, the defendants in error, Welling and Bonnoitt, made application for fifty shares of the stock. (See application in *Printed Transcript*, page 46).

Upon this application and the payment of the necessary membership fee of $50, a certificate of shares for fifty shares was issued to Welling and Bonnoitt. (See certificate of shares, *Printed Transcript*, p. 47, "Exhibit F.")

This certificate of shares expressly states that Welling and Bonnoitt are entitled to the number of shares applied for and proceeds as follows in the body : (on p. 47.)

"And the said Eastern Building and Loan Association of Syracuse, "N. Y., agree to pay said shareholders, or their heirs, executors, ad-"ministrators or assigns, the sum of one hundred dollars, for each of " said shares, *at the end of 78 months from the date thereof*."

Then, again, it appears from the said certificate of shares that the shareholder agrees to pay a monthly instalment of 75 cents on each share named in the contract until such shares mature or are withdrawn; that is to say, until the expiration of six and one-half years, or 78 months—unless sooner withdrawn. This certificate of shares is dated 2nd February, 1891. (*Transcript*, p. 49.)

Thereafter, on the 6th day of April, 1891, Welling and Bonnoitt made application to the Eastern Building and Loan Association of Syracuse, N. Y., for a loan of five thousand dollars. The application for this loan will be found marked "Exhibit G," (on page 49 of the *Printed Transcript*).

The application for this loan was accepted by the Building and Loan Association, and Welling and Bonnoitt for the same thereupon executed and delivered to the Association 78 promissory notes, viz: 75 notes for $79.20, and 3 notes for $41.70, copies of which notes will be found in the *Printed Transcript* as "Exhibit C 1," and "C 2," on page 39.

To secure these notes, Welling and Bonnoitt also executed a mortgage (See *Printed Transcript*, pp. 36-38, "Exhibit C,") whereby they mortgaged to the Building and Loan Association, certain real estate in the Town of Darlington, and County of Darlington, and State of South Carolina.

The mortgage provided as follows (p. 37):

"This grant is intended as a security for the payment of the sum of "sixty-one hundred seventy-seven and $\frac{60}{100}$ dollars, the same being the "principal, interest and premium, of a loan from said Association, "which said loan was made pursuant to and accepted under the pro-"visions of the By-Laws of said Association, and which said By-Laws "have been read by the mortgagors and are hereby made a part of this "contract, which said loan is evidenced and secured to be paid by "seventy-eight (78) certain promissory notes of even date herewith, "executed by the said Lawrence S. Welling and Marion Bonnoitt, "payable to the said Association, at its office in Syracuse, as follows: "One of each of said notes is to be paid on or before the last Saturday "of each and every month, until all of the seventy-eight notes are fully "paid."

These notes and mortgage having been executed, Welling and Bonnoitt paid all their notes, which were regularly

received by the Eastern Building and Loan Association up to the note maturing the last Saturday in August, 1897, for $41.70—that is to say, they paid the whole of the seventy-five notes for $79.20, and sent on the money to pay the first of the three notes for $41.70, maturing on the last Saturday of August, 1897.

The letter of Welling and Bonnoitt sending on this amount on August 23rd, 1897, will be found as "Exhibit H" (*Printed Transcript*, page 50.)

The answer of the Building and Loan Association to this letter of Welling and Bonnoitt will be found (*Printed Transcript*, page 50,) dated August 28th.

In this, they state to Welling and Bonnoitt that the amount remitted is not sufficient to meet the entire payment, owing to the fact that the shares had not matured in the estimated period of 78 months. The letter goes on to state that in the early history of the Association, it was thought that the monthly payment of 75 cents per share would mature the shares in 78 months, but that it had been found that that was a mistake, and that they would not mature in that period. Nor would they mature until the full maturity value of one hundred dollars had been paid, allowing for the deductions due to intervening losses by the Association; and it would be necessary for shareholders to continue full payments, and Welling and Bonnoitt must therefore continue to pay $79.20 per month until this indefinite period was reached.

At the time that this loan was made to Welling and Bonnoitt, May 1st, 1891, they had withdrawn from their position as shareholders in the Association, and an endorsement to that effect was made upon all of the fifty shares of stock held by them. (*Printed Transcript*, p. 49.)

Welling and Bonnoitt insisted that under their mortgage they were only bound to pay the exact amount of the notes specified therein, and as their notes for $41.70 matured, remitted enough to pay them in full.

The Building and Loan Association refused to receive these amounts on the ground that in the letters remitted them, they were instructed to apply them to the notes; whereas,

Welling and Bonnoitt were liable for the payment of the full monthly subscriptions as shareholders, and the payment of the notes would not satisfy the mortgage.

The defendants, Welling and Bonnoitt, having thus paid, or remitted to be paid, the full amount of all the notes mentioned in their mortgage, made a demand on the Building and Loan Association to duly satisfy the mortgage.

By the law of South Carolina (Rev. Stat., Secs. 1894 and 1895,) it is provided that any person who shall have received full satisfaction, or to whom legal tender shall have been made of his debt secured by a mortgage of real estate, shall, at the request of the mortgagor, or of his legal representative, and on tender of the fees of office for any such legal satisfaction, within three months after the request, enter such satisfaction in the proper office, and in default of so doing, he shall forfeit and pay to the party aggrieved a sum of money not exceeding one-half of the sum of money secured by the mortgage, to be recovered in any Court of competent jurisdiction in the State. (See Sections of Revised Statutes in Appendix to this Argument.)

Welling and Bonnoitt thereupon, on the 28th September, 1897, duly tendered to the Eastern Building and Loan Association the costs and fees of the office for entering the satisfaction, and required them to have satisfaction entered on the mortgage, which they declined to do, and three months after the refusal to do so, this action was brought in the Court of Common Pleas for Darlington County, under the Statute to recover damages for such refusal.

In defense to the action for damages, the Building and Loan Association set up in the Court of Common Pleas for Darlington County, in the State of South Carolina, that the mortgage was not satisfied, and that they were not bound to satisfy the same when called upon. That it was not satisfied, because by the terms of the mortgage it secured two things :

First. The payment of the 78 notes mentioned therein (75 for $79.20, and 3 for $41.70), and

Second. That it secured in addition the payment of all the dues and assessments of shareholders in the corporation

until their share reached a full maturity value of $100; that the corporation had estimated that these notes would mature in 78 months, or six and one-half years; and had so represented to intending shareholders; but that it had been mistaken in that estimate, and by the laws of New York (the Association being a corporation under the laws of New York) it had no right to allow shares to mature until the full maturity value had been reached; and that that maturity value could not be reached until after taking into consideration all payments by shareholders and debiting each with his share of all the Company's losses applicable to his shares, the full average par value of $100 was shown to have been reached.

The question came on for trial before the Court of Common Pleas for Darlington County therefore, upon the questions :

First. Under the construction of the mortgage, what did it secure ? Only the notes representing the loan; or did it in addition secure under its terms the indefinite continuous payment by the shareholders of their monthly dues ?

Second. Were the defendants still shareholders in the corporation, or had they, when they received the loan, withdrawn wholly from the corporation, so as to be no longer liable for dues thereon, and no longer therefore bound under their mortgage to pay the same ?

Third. Had the mortgage been paid and satisfied ?

On the trial in the Court of Common Pleas for Darlington County (the Circuit Court), the Presiding Judge ruled that under the terms of the mortgage it secured only the payment of the 78 notes mentioned; and that when these notes had been paid, the mortgage was satisfied, and that the mortgage did not secure the payment of any dues and assessments by shareholders (*Printed Transcript*, p. 91). The Presiding Judge in the Circuit Court therefore held that the mortgage was cancelled, and that the plaintiffs were entitled to recover; and the jury rendered a verdict in favor of the plaintiffs.

The defendant, the Building and Loan Association, appealed to the Supreme Court of South Carolina, on the ground that his Honor, the Presiding Judge, was in error in his ruling,

inasmuch as under the provisions of the laws of the State of New York, the Eastern Building and Loan Association, being a corporation under the laws of that State, the mortgage construed in connection with the laws of New York should be construed so as to secure the payment by the shareholders of their monthly assessments on their shares in addition to the notes given for the loan, and that under such construction the mortgage was not paid and satisfied, and the Building and Loan Association were not bound to satisfy it upon demand.

The case having come on to be heard before the Supreme Court of South Carolina, the Court affirmed the decision below on the ground that the proper construction of the mortgage, taken in connection with the circular known as the "*Definite Contract Plan*," was, that all that was secured by the mortgage was the 78 notes, and that when they were paid, the mortgage was satisfied; and thereupon affirmed the decision below.

After so deciding, the Court goes on to say, however, that it was contended by the appellant, the Eastern Building and Loan Association, that the agreement and By-Laws were to be construed according to the laws of the State of New York, and the Court thereupon announces as its opinion, that this was not the case; and that even if it were, comity between the different States did not require the law of one State to be executed in another when it would be against the public policy of the latter State.

From this decision of the Supreme Court of South Carolina, a writ of error has been sued out to this Court upon the assignment of error, as Federal questions, that the Supreme Court of South Carolina erred in refusing to give full faith and credit to the public acts, records and judicial decisions of the State of New York, inasmuch as it appeared by these public acts, records and judicial decisions, that the Building and Loan Association incorporated under the laws of New York had no right to mature their shares in a less period than a period sufficient to fully pay them up, at par value; that the mortgage in the present case was to be construed accord-

ing to the law of New York; and that therefore the Supreme Court of South Carolina, in failing to construe it as securing in addition to the notes mentioned therein, the payment by shareholders of the monthly assessments on their shares until the same were fully paid up, and discharged up to their par value, failed and refused to comply with the provisions of the Constitution of the United States, and failed to give full faith and credit to the public acts, records and judicial decisions of New York, and also thereby changed the settled construction of such Statutory provisions of the State of New York, so as thereby to impair the obligation of the contract between the parties, and to deprive the Association of its property without due process of law.

Under the appeal now before this Court, therefore, three questions come up :

First. Does the question upon which the State Courts decided the case, i. e., the construction of the mortgage, involve any Federal question ?

Second. If any Federal question was involved in the case, was its decision absolutely necessary to the decision of the cause, or could the result have been reached upon grounds not involving a Federal question ?

Third. Did the Supreme Court err in its decision on any Federal question involved, and actually set up and made before it ?

ARGUMENT.

Before taking up the assignments of error *seriatim*, we propose to advert to the principles of law applicable to the treatment of a writ of error from this Court to the Supreme Court of a State in like cases.

1st. Where a case has been decided by the State Court on an independent ground broad enough to maintain the judgment, and not involving a Federal question, this Court will dismiss the writ of error without considering the Federal

question, although the latter was also decided by the State Court.

Pierce vs. Somerset Ry., 171 U. S., 641.
McQuade vs. Trenton, 172 U. S., 636.
Harrison vs. Morton, 171 U. S., 38.
Bacon vs. Texas, 163 U. S., 207.

2nd. It must appear not only that the Federal question was absolutely necessary to be decided by the State Court, but that the result of the judgment in the State Court could not have been arrived at, without its deciding the Federal question adversely to the plaintiff in error.

Harrison vs. Morton, 171 U. S., 38.
Chapman vs. Goodnow, 123 U. S., 540.
Cook Co. vs. Calumet, 138 U. S., 635.
Johnson vs. Risk, 137 U. S., 300.
DeSaussure vs. Gaillard, 127 U. S., 216.

3rd. It must so appear by clear and necessary intendment from the record itself, and neither the arguments of counsel, nor the assignments of error, nor the opinion of the Court below, can be examined for this purpose. The *dicta*, or observations, or reasoning of the Court, in the opinion upon which the judgment appealed from is based, have nothing to do with the question, nor can they be looked to for the purpose of finding whether a Federal question was necessarily involved.

Gibson us. Chouteau, 8 Wall., 314.
Fowler vs. Lamson, 164 U. S., 252.
Henkel vs. Cincinnati, 177 U. S., 170.

4th. The rules of the State Courts on all questions of local or domestic import, and especially in the construction of instruments relating to the acquisition, alienation, transfer, or encumbering of real estate, are binding upon the Federal Courts.

Each State controls all rules of law applicable to the alienation, acquisition or encumbering of real estate within its limits, and the fact that these rules differ from the rules

prevailing in other States, or that one State refuses to give effect so far as the real estate within its own limits is concerned, to the rules of law, governing the acquisition, alienation, or encumbering of real estate in any other State, constitutes no Federal question.

Warburton vs. White, 176 U. S., 484.

Knapp, Stout & Co., vs. McCaffrey, 177 U. S., 638.

5th. The construction and effect given to a paper purporting to be a conveyance or mortgage of real estate as laid down and settled by the Supreme Court of a State is binding upon all Federal Courts.

De Vaughn vs. Hutchinson, 165 U. S., 566.

Missouri, Kansas, etc., Trust Co. vs. Krumseig, 172 U. S., 351.

Brine vs. Insurance Co., 96 U. S., 627.

6th. The decisions of State Courts as to the construction of contracts declared by the State Court to be affected by the general principles of public policy of the State are binding on Federal Courts, unless the question was that the State itself had, by legislation, impaired the obligation of the contract.

Delmas vs. Ins. Co., 14 Wall., 661.

7th. A contract can only be impaired within the meaning of the provision of the United States Constitution by some subsequent Statute, or constitutional provision of the State which has been upheld or given effect to by the State Court, or by a change in the judicial construction of a Statute from a construction previously made, and not by a judicial construction of the contract upon the general principles of the jurisprudence of the State.

Bacon vs. Texas, 163 U. S., 207.

We proceed now to take up the questions developed by the assignments of error in the case at bar.

Was the Case Decided by the State Court on any Federal Question?

The entire issue in the case was :

Has the mortgage been satisfied ?

This issue depended on the question of what was secured to be paid by the terms of the mortgage. According to the contention of the plaintiff in the State Court (defendants in error here), the mortgage secured only the payment of a certain specific sum of money represented by 78 promissory notes.

According to the contention of the defendants (plaintiffs in error here) the mortgage secured additionally the payment of certain dues, assumed by Welling and Bonnoitt, as shareholders in the Building and Loan Association.

This last question was complicated by the claims of Welling and Bonnoitt, that they had long ceased to be such share holders, and were not liable for any such dues, and also that before making the loan, all the Association had was their personal responsibility unsecured by any mortgage, and that by giving the mortgage for a definite loan they did not give it also to secure an indefinite shareholder's liability

The first question contained no complicating issues.

It was admitted as a matter of fact that all the 78 notes mentioned in the mortgage had been paid, or payment in full tendered. This left only the bare question whether the mortgage was thereby satisfied and discharged as a mortgage lien.

This was the question decided by the State Courts.

The State Circuit Court decided the question on this alone. (See decision of State Circuit Judge, *Printed Transcript*, p. 91.)

The State Supreme Court affirmed this decision, and affirmed it on this ground.

The Court says (*Transcript*, p. 99) :

"The first and main question that will be considered, is whether "there is error on the part of the Circuit Judge in his construction of "the contract ?"

The Court then goes on and affirms the construction of the Circuit Judge—on the ground that the mortgage properly construed, secured only the payment of the 78 notes.

Following a rule of construction that had already been laid down by the Court.

Williamson vs Association, 54 S. C., 582.

After so affirming the judgment below, the Court proceeds to remark upon the claim of the appellant (the plaintiff in error here), that the mortgage should be construed according to the laws of New York, and on that point observes that even if the law of New York were to the effect claimed by the appellant, as such law would be against the policy of South Carolina, it would not be enforced in the latter State as to land therein.

An inspection of the judgment made by the Supreme Court of the State shows that it decided that the mortgage in question construed according to its terms under the law of South Carolina, secured the payment only of the 78 promisory notes, and those notes having been paid, the mortgage was satisfied.

The Ground Stated Broad Enough to Support the Judgment.

It will hardly require argument to show that the construction of a deed or mortgage of real estate is peculiarly for the domestic tribunals of a State.

A mortgage or conveyance goes on record. When there, it is to be treated as notice to the world of the extent of the alienation or encumbrance.

What, therefore, is good as a mortgage, and to what extent it is good, and exactly what land, and for how long, and for what amount, this mortgage enures over, and as an encumbrance, is for the determination of the State in which the land is situate, and its tribunals.

In this present case the plaintiff in error (the defendant in the State Court) sought to import into the mortgage two contracts; one an obligation to repay a loan, and the other a statutory contract alleged to exist under the laws of New

York, between a New York corporation and its stockholders, whereby the latter were bound to pay certain dues.

The claim was made in the State Court that the mortgage secured the performance of both these contracts, and the attempt was made to have the State Court construe the laws of New York and enforce it.

This last, the State Courts declined to do.

The State Courts in effect said that the case did not require any construction or enforcement by them of the law of New York. That the case before the Court was not one for the enforcement of the contract between the corporation and its shareholders. Such might involve the question of what, under the law of New York, was the contract between the New York corporation and its shareholders.

If the Building and Loan Association had brought an action in the Courts of South Carolina to recover from one of its shareholders, his dues as such, then the question of the contract relation between corporations and shareholders might arise.

But the case before the Court was :

What did the mortgage secure ?

Having come to the conclusion that the mortgage secured only the payment of a specific sum of money, and not the obligations of the shareholders to the corporation, it became wholly unnecessary for the State Court to consider and pass upon those obligations of the law of New York respecting them.

This was certainly broad enough to support the judgment.

If the mortgage secured only the payment of the 78 notes, then the State Court was clearly right in holding that their payment satisfied the mortgage—and such ground was unquestionably broad enough to support the judgment.

The contention of the plaintiff in error here is really that the State Court erred in ruling that the mortgage only secured the 78 notes. That it was bound to rule that the mortgage secured additionally the payment of dues of shareholders, and the failure of the State Court so to find was a failure to enforce the statutory obligation created by the laws of New York.

We submit that under the decisions cited, this Court cannot correct the decisions of the Supreme Court of South Carolina, even if erroneous in this respect.

It is at the least a fair ground for the construction of the mortgage, that it secured only the payment of the 78 notes. No Federal question is involved in that construction.

If the State Court arrived at that construction, and declined to consider the Federal question, this refusal to consider an unnecessary Federal question is no ground for reviewal here.

The Alleged Federal Questions.

The Federal questions sought to be raised by the assignments of error are three in number :

First. That the Supreme Court of South Carolina, by its decisions, refused full faith and credit to the public acts of the State of New York.

Second. That by its decision it impaired the obligation of a contract between the parties.

Third. That it deprived the plaintiff in error of its property without due process of law.

The Denial of Full Faith and Credit.

No claim of any Federal question was made before either the Circuit or Supreme Court of the State.

The question made before the Circuit Court—the trial Court—will be found in the pleadings (*Transcript*, pp. 2-6,) and in the rulings asked of and made by the Presiding Judge. (*Transcript*, pp. 90-93). The questions made before the Supreme Court are limited to the exceptions to the judgment of the Circuit Court. (*Transcript*, pp. 93-94). In none of these will appear any claim that under the Constitution of the United States the Laws of the State of New York controlled the construction of the mortgage because of the Constitutional requirement of faith and credit.

To justify this Court taking jurisdiction on a writ of error to a State Court, the Federal question must have been so

specially set up and claimed in the State Court as that the attention of that Court was called thereto as one relied on by the party, and the decision of that Court must have necessarily involved the denial of the claim.

Oxley Stave Co. vs. Butler County, 166 U. S., 648.
Dewey vs. Des Moines, 173 U. S., 193.
Keokuk, &c., Bridge Co. vs. Illinois, 175 U. S., 633.

The question appears for the first time in the petition for a rehearing filed in the State Supreme Court (after the *remittitur* had gone from that Court back to the Circuit Court); and a question set up for the first time in such a petition is too late to bring the case within the appellate jurisdiction of this Court.

Bushnell vs. Crooke Mining Co., 148 U. S., 682.
Loeber vs. Schroeder, 149 U. S., 580.
Sayward vs. Denny, 158 U. S., 180.

The claim must have been so set up in the trial Court below. If not so set up in that Court, then, although the State Supreme Court, in affirming the decision of the lower Court, expressly decide against a right claimed under the laws of the United States, this Court has no jurisdiction to review the decision affirming the judgment of the trial Court.

Chemical Nat. Bk. vs. City Bank, 160 U. S., 646.

The alleged denial of full faith and credit to the public acts, records and judicial proceedings of the State of New York, consists in the contention that the Supreme Court of South Carolina should have held the mortgage as securing the performance of shareholders' duties, and then have construed and enforced those duties according to the laws of New York.

The mortgage is not a New York contract. It was made in South Carolina, by citizens of South Carolina, and covers real estate in South Carolina (*Printed Transcript*, p. 36, Ex. "C.") No mention of the State of New York or its laws appears in the mortgage.

The general rule as to all contracts affecting real estate, whether by way of alienation or encumbrance, is that they are controlled as to form and method of execution, and as to effect and construction by the *lex loci rei sitæ.*

Green vs. Van Buskirk, 5 Wall., 307.

The "faith and credit" clause of the United States Constitution and of Rev. Stat., Sec. 905, has received full discussion in this Court.

It has come before the Court in the shape :

a. Of the effect to be given to a judgment recovered in another State.

b. Of the effect to be given to a Statute passed in another State.

In the case of judgments, "full faith and credit" has been finally settled to be the giving to a judgment recovered in any State, appearing to have jurisdiction of parties and subject matter, all the force and effect which it should have as *res adjudicata* or estoppel, as to all the defenses that could have been set up in the *fori* of the State in which judgment was recovered.

Cole vs. Cunningham, 133 U. S., 107.
Huntingdon vs. Attrill, 146 U. S., 685.

Although a judgment in the State in which it was recovered, it does not become a judgment in any other State, until passed on, and also reduced to judgment therein.

McElmoyle vs. Cohen, 13 Pet., 312.

Although it may have certain incidents as a judgment in the State where it was first recovered, such as that of a lien on real estate, it does not possess those incidents in any other State, unless the same be incident to all other judgments therein.

Cole vs. Cunningham, supra.

Where the rules of law in one State give a certain construction to wills and deeds affecting real property within that State—the fact that by judgment a different construction

is given to such document in another State, does not conclude the matter, but such judgment may be disregarded as inoperative on real estate, without the jurisdiction of the State in which it was recovered.

Blount vs. Walker, 134 U. S., 607.
Clarke vs. Clarke, 178 U. S., 186.

Any judgment recovered can always be inspected to see if the Court which rendered it had jurisdiction of the subject matter or the parties, so as to make it valid and binding.

Pennoyer vs. Neff, 95 U. S., 714.

From these principles it follows that in the case of judgments, "full faith and credit" does not mean that the judgment is to be given the full force and effect with the incidents that it possessed in the State where it was recovered, but only that if it appears that the Court which rendered it, had jurisdiction, then it is to be given the effect of a final adjudication upon all questions between the parties that could have been passed upon in the forum where recovered, and not at variance with any rules of law, regarding matters of domestic real estate or regulations in the forum in which such judgment may be set up.

Applying the same principles to Statutes, it follows that the Statute law of one State can have no force in another State except as applicable to matters within the jurisdiction where enacted.

It is trite to say that Statutes have no extra-territorial force.

The people of New York cannot pass laws for the State of South Carolina.

A corporation created by the State of New York, may have by Statute special privileges and powers in New York, but if it leaves New York to do business in another State, it does not carry those privileges and powers.

It carries to such other State only such powers and privi-

leges as by the law of such other State, foreign corporations in general are allowed to have and exercise.

A Statute imposing penalties in one State is not enforceable in another State.

Huntingdon vs. Attrill, 146 U. S., 657.

The giving faith and credit to the Statute of another State comes then to this :

The Statute or law of another State, when properly proven, must be taken as valid, and as having *in the State which passed it, and upon all persons and subject matter properly subject to its jurisdiction,* the effect given by its terms, or by the Courts of that State.

One State cannot legislate as to the real estate, or the mortgages thereon, in another State, and therefore it is not to deny faith and credit to a Statute to hold that outside the jurisdiction of the State, which passed it, such legislation had as to subject matter and persons in another State, no effect at all.

Clarke vs. Clarke, 178 U. S., 186.

Great Western Telegraph Co. vs. Purdy, 162 U. S., 329.

In the present case the Supreme Court of South Carolina has neither given or refused to give effect to the law of New York. It has held that law neither valid nor invalid. It has simply held it inapplicable; and the decision of a State Court, construing or holding the law of another State inapplicable, is not reviewable here.

Lloyd vs. Matthews, 155 U. S., 222.

The additional dictum of the Supreme Court of South Carolina to the effect that no State is bound to recognize or enforce contracts which are injurious to the welfare of its people, or which are a violation of its own laws, is a citation from the case of *"Pope vs. Hanke,"* decided by the Supreme Court of Illinois, and reported in 28th L. R. A., 568; and followed by the inference of the Supreme Court of South Carolina that it appears from the authorities that the State of

South Carolina is not compelled from mere comity to recognize the laws of the State of New York.

This is simply an additional answer adduced in the opinion of the Court, to the argument and claim of the counsel for the plaintiff in error. The Court had already decided in its opinion that their conclusion as the proper construction of the contract was that under the wording of the mortgage, it secured only the payment of certain specific notes.

It then went on to say that the appellant in that Court (the plaintiff in error here) contended that the mortgage agreement and By-Laws were to be construed under the laws of New York.

The Supreme Court of South Carolina then goes on to say that these contracts were enforceable by the Courts of South Carolina, and referred to property situated within the limits of the State of South Carolina, and are to be construed under the laws of New York, only in so far as by comity the State of South Carolina gives effect to those laws.

It is evident that the Supreme Court of South Carolina is not dealing with the Constitutional provisions of the United States, which require them to give full faith and effect to the records, laws and judicial proceedings of the State of New York; for that Constitutional provision is applicable only to such subject matter and persons as are within the jurisdiction of the State of New York.

If the case before the Court had been a case where the State Court of South Carolina was construing a mortgage of land in New York, or was *giving* effect to a statutory right acquired under the laws of New York, it would be bound under the Constitutional provision to give such effect to the laws of New York as would in the State of New York be given; but it is not bound to give such effect to the laws of New York as would in the State of New York be given to the subject matter within that State, when the subject matter of the litigation is within the State of South Carolina. New York can undertake to legislate neither as to real estate situate within the State of South Carolina, nor as to contracts and domestic regulations between citizens of South Carolina or

between citizens of other States, to be made, executed and performed within the State of South Carolina, and enforced by the Courts of South Carolina. It is evident that the application intended to be given by counsel for plaintiff in error to the language of the Supreme Court of the State of South Carolina on this point, is wholly misplaced. That the Supreme Court of South Carolina simply intended to say that the legislation of New York, in so far as it was sought to be applied to matters strictly within the scope and jurisdiction of the State of South Carolina, had only such effect and application as by comity would be by the Courts of South Carolina given to the same; and in the statement of which principle of law on that point the State of South Carolina was perfectly right and justified by the soundest principles of Constitutional law.

Huntingdon vs. Attrill, 146 U. S., 657.

Impairment of Contract.

The claim of a Federal question in that any contract was impaired, is set up for the first time in this Court.

It was not set up before the Court of Common Pleas (the Circuit Court) in South Carolina. (*Printed Transcript*, pp. 90, 91.)

It was not set up before the Supreme Court of South Carolina. (*Printed Transcript*, pp. 93, 94.)

The rule in this Court is, that if the Federal question has not been raised in the State Court, it cannot be set up for the first time here.

Chicago and Northwestern Ry. vs. Chicago, 164 U. S., 454.

Capital National Bk. vs. First National Bk., 172 U. S., 425.

Keokuk &c. Bridge Co. vs. Illinois, 175 U. S., 633.

Where only one Federal question was raised in the State Courts, the party raising it cannot, on writ of error to the Court, argue any other Federal question in addition thereto, not raised in the State Court.

Dewey vs. Des Moines, 173 U. S., 193.

This additional Federal question that a contract was impaired, appears for the first time in a petition to the Supreme Court of South Carolina for a re-hearing (which petition was dismissed on the ground that the remittitur had gone to the lower Court, and the Supreme Court had lost jurisdiction, *Transcript*, p. 108), and later in the assignment of errors for this Court. (*Transcript*, pp. 113-115.)

"The record discloses no Federal question asserted in terms save in "the application to the Supreme Court for a re-hearing when the sug- "gestion came too late."

Capital Natl. Bk. vs. First Natl. Bk., 172 U. S., 425.

It never was made in either the Circuit Court or the Supreme Court of South Carolina, until after final judgment.

We do not moreover exactly understand what the meaning of the contention in the present case is.

The prohibition in the Constitution is against any State passing an Act impairing the obligation of a contract. This has been construed to mean that no State can by any Statute or Constitutional provision impair the obligation of existing contracts—nor can such impairment be effected by a State Supreme Court reversing a settled construction of a Statute or Constitutional provision under which settled construction contracts have been entered into.

There is nothing of the kind in the present case. The State of South Carolina has taken no action, legislative or constitutional, affecting the present agreement. Nor has the Supreme Court of South Carolina made any decision in the present case reversing any previous rulings of its own, or changing its construction of any Statute.

The mistake seems to arise from the belief on the part of the counsel for plaintiff in error that Sections 1894 and 1895 of the Revised Statutes of South Carolina of 1893, were enacted in 1893, after the making of the mortgage in the present case.

This is a misapprehension. The Act embodying the provisions of those Sections was enacted in 1817 (Stat. at Large, So. Ca., Vol. VI, p. 61.)

The Statutes of South Carolina were revised, i. e., all embodied in one volume as in the case of the United States Revised Statutes, in 1893, and these Sections therein incorporated as existing and continuing law.

Denial of Due Process of Law.

Neither was any such Federal question as this made before the State Courts.

This question, like that of the impairment of a contract, appears for the first time in the petition to the State Court for a re-hearing (long after final judgment) and in the assignment of errors.

As the plaintiff in error had a full hearing and trial before the Circuit Court and Supreme Court of South Carolina, it is impossible to see how, under the decision, the judgment rendered it can be said to have been rendered without due process of law.

Pennoyer vs. Neff, 95 U. S., 714.

EXTRACT FROM REVISED STATUTES OF SOUTH CAROLINA OF 1893.

Sec. 1894. Any person who shall have received full payment or satisfaction, or to whom a legal tender shall have been made of his debt, damages, costs and charges, secured by mortgage of real estate, shall, at the request of the mortgagor, or of his legal representative, or of any other person being a creditor of the said debtor, or a purchaser under him, or having an interest in any estate bound by such mortgage, and on tender of the fees of office for entering such satisfaction within three months after such request made, enter satisfaction in the proper office on such mortgage, which shall forever thereafter discharge and satisfy the same.

Sec. 1895. Any person having received such payment, satisfaction or tender as aforesaid, who shall not, within three

months, by himself or his attorney, after request and tender of fees of office, repair to the said office and enter satisfaction as aforesaid, shall forfeit and pay to the party aggrieved a sum of money not exceeding one half of the amount of the debt secured by mortgage as aforesaid, to be recovered by action in any Court of competent jurisdiction within the State; and on judgment being rendered for the plaintiff in such action, it shall be the duty of the Presiding Judge to order satisfaction to be entered on the judgment or mortgage aforesaid, by the Clerk or Register, or other proper officer, whose duty it shall be, on receiving such order, to record the same, and to enter satisfaction accordingly.

NOTE.—The foregoing Sections of the Revised Statutes are the same as Sections 1791 and 1792 of the General Statutes of 1882, and Sections 1 and 2 of the Act of 1817. See Stat. S C., Vol. VI, p. 61.

Henry A. M. Smith.